

ORDER OF THE MISSOURI BOARD OF PHARMACY
ISSUING SAV-RX PHARMACY A PHARMACY PERMIT
SUBJECT TO PROBATION

Comes now the Missouri Board of Pharmacy ("Board") and issues its ORDER granting a PROBATED pharmacy permit, permit number 2008024280, to Sav-Rx Pharmacy (hereinafter "Sav-Rx" or "Respondent"), pursuant to the provisions of Section 620.149, RSMo. As set forth in Section 620.149, RSMo, Sav-Rx may submit a written request for a hearing to the Administrative Hearing Commission seeking a review of the Board's decision to issue a probated permit to Sav-Rx. Such written request must be submitted to the Administrative Hearing Commission within thirty (30) days of issuance of this Order. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman Building, Room 640, Jefferson City, Missouri 65102-1557. If no written request for review is received by the Administrative Hearing Commission within the thirty (30) day period, the right to seek review of the Board's decision shall be waived.

Should Sav-Rx file a written request for review of this Order, the terms and conditions of the Order shall remain in force and effect unless and/or until such time as the Administrative Hearing Commission issues an order contrary to this Order.

FINDINGS OF FACT

1. The Missouri Board of Pharmacy (hereinafter "Board") is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing provisions of Chapter 338, RSMo.

2. On or about September 26, 2007, the Board received an Application for a pharmacy permit from Sav-Rx, L.L.C. On that application Sav-Rx denied having been denied, refused, convicted, fined, refused disciplined or had a pharmacy permit disciplined for violation of pharmacy, liquor or drug law of any other state.

3. Sav-Rx had been fined by the states of Montana and Illinois for practicing pharmacy without a permit prior to its submittal of its application for a pharmacy permit on September 26, 2007.

4. Prior to filing the application for a pharmacy permit, Sav-Rx practiced pharmacy as defined in Section 338.010, RSMo, in Missouri without having a permit to do so. The Board sent Sav-Rx a cease and desist letter in 2000 for unlicensed activity, and the Board's general counsel sent a letter to Sav-Rx in 2001 insisting that Sav-Rx cease such unlicensed practice.

5. SAV-Rx is licensed in the state of Nebraska.

6. Based on information received by the Board, pursuant to Section 338.055 RSMo, the Board concluded Sav-Rx engaged in conduct which would be grounds to deny her application to practice pharmacy by the Board.

7. At its December 2007 meeting, the Board reviewed Sav-Rx's request to obtain a pharmacy permit.

8. During this review, the Board ascertained that Sav-Rx had violated Missouri law by practicing pharmacy without a permit to do so, had been fined in the states of Montana and Illinois for practicing pharmacy in those states without a permit to do so, and that Sav-Rx had denied being fined in those states in its application filed with the Board on September 26, 2007.

9. On May 30, 2008, the Board notified Sav-Rx that its application of September 26, 2007, became null and void on March 25, 2008, due to the provisions of 20 CSR 2220-2.020.2(A). The Board also notified Sav-Rx that its explanations for false responses on its September 26, 2007 application had not been submitted in a timely fashion. In response to this letter, Sav-Rx submitted a new application.

10. On June 10, 2008, Christi Piti, Vice President of Sav-Rx, wrote the Board and admitted that Sav-Rx shipped prescriptions into the state of Missouri between August 7,

2007, and June 10, 2008, without having a pharmacy permit to so ship those prescriptions. Ms. Piti stated that Sav-Rx had ceased shipping prescription drugs to patients in Missouri, and would not do so until it is licensed by the Board to do so.

11. On June 17, 2008, Sav-Rx Pharmacy filed an application for a pharmacy permit. In that application, Sav-Rx stated that it had been denied, refused, convicted, fined, disciplined or had a pharmacy permit disciplined for violation of pharmacy, liquor or drug laws, or are presently charged in any such violations in Missouri or any other state. It included in its application documentation of shipping drugs into Illinois and Montana without a license to do so. Sav-Rx paid penalties to those states for those violations.

12. Based upon the findings of this review of Sav-Rx's statements in its application for licensure with the Board, the Board concluded that the Board could deny Sav-Rx's application for licensure transfer based upon the provisions in Section 338. 055. 2 (4), (5), (6), (8), and (13), RSMo.

13. At its July 2008 meeting, the Board reviewed Sav-Rx's request to obtain a pharmacy permit.

14. During this review, the Board ascertained that Sav-Rx had violated Missouri law by practicing pharmacy without a permit to do so, had been fined in the states of Montana and Illinois for practicing pharmacy in those states without a permit to do so, and that Sav-Rx had been fined in those states in its application filed with the Board on June 17, 2008.

15. Pursuant to the provisions of Section 620.149, RSMo, the Board hereby issues pharmacy permit number 2008024280 to Sav-Rx in lieu of denial of Sav-Rx's request for a license to practice pharmacy in Missouri. Permit number 2008024280 is issued subject to the terms and conditions set forth herein below.

CONCLUSIONS OF LAW

16. Sav-Rx's conduct as alleged above is cause for the Board to deny Sav-Rx a license to practice pharmacy pursuant to Section 338.055.1 and .2, RSMo, which states in pertinent parts:

1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception or misrepresentation.

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter.

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter.

(8) Denial of licensure to an applicant or disciplinary action against an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, surrender of the license upon grounds for which denial or discipline is authorized in this state.

(13) Violation of any professional trust or confidence.

17. Section 620.149, RSMo, provides in pertinent part:

1. Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

18. The Board hereby issues this ORDER in lieu of denial of Sav-Rx's request for a license to practice pharmacy in Missouri pursuant to Section 620.149, RSMo.

ORDER

Based on the foregoing and in lieu of denying Sav-Rx Pharmacy a pharmacy permit, the Board hereby issues Sav-Rx Pharmacy permit #2008024280 subject to PROBATION for three (3) years (hereinafter "disciplinary period"). The terms of discipline shall be:

19. Respondent shall pay all required fees for licensing to the Board and shall renew its pharmacy license prior to October 31 of each licensing year.

20. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

21. Respondent shall keep the Board apprised of all licensed pharmacists employed by the Respondent, and the individuals' current home and work addresses and telephone numbers.

22. If, after disciplinary sanctions have been imposed, the Respondent fails to keep its pharmacy permit current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.

23. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months, beginning six (6) months after the date of this Order, stating truthfully whether or not it has complied with all terms and conditions of this disciplinary order.

24. Respondent shall not serve as an intern training facility for interns.

25. Respondent shall select an independent, Missouri licensed, pharmacist consultant for the purpose of reviewing and insuring all compliance measures are carried out in accordance with all applicable laws and regulations. The consultant can not be an employee of the Respondent. Respondent shall submit documentation and credentials of its chosen consultant to the Board office for approval within thirty (30) days of the beginning date of probation. Said consultant shall submit a written plan to the Board office outlining what procedures or changes in operation will be implemented and on what time table is proposed for completion. The consultant shall then provide ongoing reports to the Board office attesting to the pharmacy's compliance or noting deficiencies for each visit made. The visits and initial

report shall be provided within thirty (30) days of the beginning of probation. Visits to the pharmacy to assess compliance will be completed at a minimum of a 6-month cycle and reports to the Board office will be provided once every six (6) months throughout the disciplinary period. The consultant shall be hired at Respondent's expense.

26. Respondent shall make a representative of the pharmacy available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

27. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order.

28. The Board of Pharmacy will maintain this Order as an open record of the Board as provided in Chapters 338, 610, 620, RSMo.

Upon the expiration of the disciplinary period, Respondent's permit as a pharmacy shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondent's pharmacy permit.

No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for a hearing before the Board in accordance with provisions of Chapter 536, RSMo.

If the Board determines that Respondent has violated a term or condition of this Order, which violation would be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED EFFECTIVE this 28th day of August, 2008



TOM GLENSKI, R.Ph
CHIEF INSPECTOR
MISSOURI BOARD OF PHARMACY